IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8499 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? Yes.

2 To be referred to the Reporter or not ? No.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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REFNOL OIL REFINERIES PVT LTD - Petitioner(s)
Versus
SALES TAX OFFICER (1) & 4 - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 19/04/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. By filing the instant petition under Article 226 of the Constitution , the petitioner has

prayed to declare that Section 47 (4A) of the Gujarat Sales Tax Act, 1969 (“the Act” for short) is ultra-vires the Constitution of India being violative of Articles 14, 19(1)(g) of the Constitution. The petitioner has further prayed to declare that (i) the order passed by the respondent No.1 which is produced at Annexure-A/1, (ii) the order passed by the respondent No.2 which is produced at Annexure-A/2, (iii) the order passed by the respondent No.3 which is produced at Annexure-A/3 and the order passed by the respondent No.4 which is produced at Annexure-A/4 as well as the notice produced at Annexure-A/5 in so far as the same relate to the charge of interest under Section 47 (4-A) of the Act are apparently illegal, without jurisdiction and therefore are liable to be set aside. The petitioner has further prayed to direct the respondents No.1 to 4 to grant set off of the tax under Rule 42 of the Gujarat Sales Tax Rules, 1970 to the petitioner.

2. The petitioner is a private limited company incorporated under the Companies Act, 1956 and dealer registered under the provisions of the Act. The petitioner is engaged in the business of refining burnt oil and selling the same. The petitioner is also engaged in the business of refining the burnt oil of others on job work

basis. The petitioner is effecting the sales of refined oil in the State as well as outside the State on consignment basis. For its business, the petitioner purchases raw material etc. from local dealers registered under the Act.

3. The petitioner filed returns under the Act for assessment years 1983-84, 1984-85 and 1985-86. The respondent No. 1 i.e. Sales Tax Officer (1), Enforcement, Ahmedabad District, Division-4, Ahmedabad assessed those returns and passed the order dated April 28, 1988 which is produced at Annexure-A/1 to the petition. By the said order the respondent No.1 held that out of total purchases of the petitioner against the declarations in Form No. 19, 60% of the purchases were used by the petitioners in manufacturing taxable goods sold by it outside the State by consigning the same to its head office at Bombay. Consequently, the respondent No.1 levied purchase tax under Section 16 of the Act with additional tax and also levied penalties under Section 15(1)(a), 45(4) and 45(6) as well as charged interest under Section 47 (4-A) of the Act.

4. Feeling aggrieved, the petitioner preferred separate appeals before the respondent No. 2. The respondent No. 2 by his consolidated appellate order dated March 18, 1989 confirmed the order

produced at Annexure-A/1 in so far as the same related to levy of purchase tax u/s 16 of the Act, but partly allowed the same in so far as it related to the orders of penalties under Section 45 (1) (a) and 45(6) of the Act. He, however, confirmed the penalties levied under Section 45 (4) of the Act. In so far as charge of interest u/s 47 (4-A) of the Act is concerned, he issued the notice in Form No. 49 u/s 67 of the Act proposing to revise the order at Annexure-A/1 and made enhancement in the interest charged by the respondent No.1 under Section 47 (4A) of the Act.

5. Being aggrieved by the appellate orders produced at Annexure-A, the petitioner preferred Second Appeals on May, 17,1989 before the respondent No. 3. The respondent No. 3 passed the orders dated December 31, 1990 rejecting the same.

6. The case of the petitioner is that even though the second appeals against the orders produced at Annexure A-3 were pending before the respondent No.3, the respondent No.4 initiated revisional proceeding against the petitioner on November 9, 1990 by issuing the notice of proposed revision of the orders produced at Annexure-A/2 in so far as the same related to (1) levy of purchase tax u/s 16 of the act

(2) the penalties imposed by the common orders at Annexure-A/2 and (3) the interest charged thereunder. The respondent No. 4 ultimately passed the revisional orders on August 7, 1991 for the assessment years 1983-84, 1984-85 and 1984-85 which are produced at Annexure-A/4 to the petition. The respondent No.4 did not pass any order for the assessment year 1985-86. From the orders passed by the respondent No. 4, it is evident that he raised an additional demand with revised tax under 16 of the Act and penalties u/s 45 of the Act as well as interest under Section 47 (4-A) of the Act.

7. The case of the petitioner is that the orders at Annexure-A/1 to A/4 are apparently illegal and without jurisdiction in so far as the same relate to the non-grant of set off to the petitioner and charge of interest under Section 47 (4A) of the Act and therefore are liable to be set aside. What is claimed by the petitioner is that the provisions of Section 47 (4A) of the Act are ultra vires the constitution, being violative of Articles 14, 19 (1) (g) and 300A of the Constitution. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

8. On service of notice Mr. B.L. Modak, Assistant Commissioner of Sales Tax has filed the affidavit-in-reply mentioning, inter-alia, that the validity of Section 47 (4A) of the Act was upheld by the Division Bench of the Gujarat High Court in Ashapura Mineral Company Vs. State of Gujarat, (1993) 089 STC 0289 and therefore the petition should be dismissed.

9. This Court has heard Mr. Tanvish U. Bhatt, learned counsel for the petitioner and Mr. R.C. Kodekar, learned A.G.P. for the respondents at length and in great detail and considered the documents forming the part of the petition.

10. On perusal of the judgment delivered by the Division Bench in Ashapura Mineral Company (supra), it is evident that essentially the said decision was rendered on the basis of the decision of the Supreme Court in Associated Cement Co. Ltd. V. Commercial Tax Officer, (1981) 48 STC 466. However, minority view taken in Associated Cement Co. Ltd. (supra) came to be confirmed by 5 Judges Constitution Bench delivered in J.K. Synthetics Ltd. V. Commercial Tax Officer, AIR 1994 Supreme Court 2393, wherein the Constitution Bench has taken a view that

liability to pay interest does not arise from the date of filing of the original return, but arises from the date of assessment year.

11. It may be mentioned that the validity of Section 47 (4A) of the Act was the subject matter of challenge in different petitions which were filed before this Court after judgment was delivered by the Supreme Court in J.K. Synthetics Ltd. (supra). When those petitions were taken up for final hearing, it was argued on behalf of the Revenue that the principle laid down by the Supreme Court in J.K. Synthetics Ltd. (supra) would not be applicable as the provisions of Rajasthan Sales Tax Act, 1954 were different from those of the Gujarat Sales Tax Act,1969. After considering the said argument as well as the schemes of both the Acts, the Division Bench of this Court in Brooke Bond India Ltd. V. State of Gujarat, (1999) 113 STC 184, held as under :

> “The return had been filed firstly prior to the Tribunal's second decision pronouncing upon the claim of exemption on the purchases of chicory roots made by the dealer. Secondly, the claim was founded and emanated from the provisions of the Act and

not from the decision of the Tribunal. The decision of the Tribunal was only a supportive material for the dealer's claim. The fact that the Tribunal had reversed its earlier decision about the taxability which was not a final authority on the pronouncement of law neither made the dealer's return as such wrong or incorrect nor enjoined an obligation on the dealer to withdraw its claim fir exemption which emanated from the provisions of the Act and file a revised return by surrendering its claim to exemption on the basis of Tribunal's decision. Moreover though the High Court had affirmed the order of the Tribunal, the decision of the High Court had since been reversed by the Supreme Court upholding the claim of the dealer to the exemption. Therefore, the levy of interest under section 47(4A) was not permissible inasmuch as the tax payable under the return filed by the dealer had been paid in accordance with the provisions of sub-section (1) or sub-section (2) of Section 47, within the time allowed and the tax on assessment had also been paid by the date specified in the notice of demand by the dealer."

12. In view of the principles laid down by the Division Bench of this Court in Brooke Bond India Ltd. (supra), Mr. Tanvish U. Bhatt, learned counsel for the petitioner does not press the prayer made by the petitioner to declare that Section 47(4A) of the Gujarat Sales Tax, 1969 is ultra vires the Constitution being violative of Articles 14, 19 (1) (g) and 300A of the Constitution of India. Therefore, the said prayer stands rejected as not pressed. However, there is no manner of doubt that in view of the principle laid down by this Court in Brooke Bond India Ltd. (supra), the petitioner would be liable to pay interest not from the date of filing of the returns but from the date of passing of the order. To this extent the petition will have to be allowed.

13. For the foregoing reasons, the petition partly succeeds. The prayer made by the petitioner in paragraph No. 17(A) (i) of the petition is rejected as not pressed. It is declared that the petitioner would be liable to pay interest from the date of assessment orders and not from the date on which the returns were filed for three assessment years. Rule is made absolute to the extent indicated here-in-above.

There shall be no order as to costs.

(J.M. Panchal,J.)

(Bankim N. Mehta,J.)

/JVSatwara/